

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RAFAEL ENRIQUE HENRIQUEZ	§	
v.	§	CIVIL ACTION NO. 6:13cv238 (consolidated with 6:13cv239)
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Rafael Henriquez, proceeding *pro se*, filed these application for the writ of habeas corpus challenging the legality of his convictions. The cases were consolidated and this Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Henriquez was charged in separate indictments with possession of more than four ounces but less than five pounds of marijuana in a school zone, and possession of more than four grams but less than 200 grams of methamphetamine in a school zone. On August 16, 2010, he pleaded guilty to both indictments, receiving sentence of ten years in prison, probated for five years, on the marijuana charge and ten years in prison, probated for ten years, on the methamphetamine charge. He did not appeal, and on October 1, 2010, Henriquez was deported to El Salvador.

He unlawfully returned to the United States and was found in Hildago County, Texas on December 8, 2010. The State of Texas filed motions to revoke Henriquez's community supervision in both cases, and Henriquez pleaded true to these allegations and received concurrent four-year sentences on April 11, 2011. Henriquez appealed, and the Twelfth Judicial District Court of Appeals affirmed the judgments, but modified them to correct a clerical error concerning restitution.

Henriquez v. State, civil action no.'s 12-11-00143-CR and 12-11-00146-CR, 2012 WL 1883753 (Tex.App.– Tyler, May 23, 2012, no pet.). Henriquez did not file a petition for discretionary review.

On August 31, 2012, Henriquez filed two separate state habeas proceedings challenging the underlying guilty plea proceedings. These were denied without written order by the Texas Court of Criminal Appeals on December 12, 2012.

Henriquez signed his federal habeas corpus petitions on January 7, 2013. These petitions allege that Henriquez's original guilty plea was invalid because he received ineffective assistance of counsel. The Respondent has filed a motion to dismiss, asserting that Henriquez's petition is barred by the statute of limitations. The Respondent observes that Henriquez is challenging the underlying guilty plea proceeding, not the final adjudication of guilt, and argues that the limitations period began to run on the date that the underlying plea proceeding became final, which was September 15, 2010. Henriquez did not file a reply to the motion to dismiss.

After review of the pleadings, the Magistrate Judge issued a Report on August 29, 2013, recommending that the motion to dismiss be granted and that the petition be dismissed with prejudice. The Magistrate Judge also recommended that Henriquez be denied a certificate of appealability *sua sponte*. Henriquez received a copy of this Report on or before September 12, 2013, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 14) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled consolidated application for the writ of habeas corpus is hereby **DISMISSED** with prejudice. It is further

ORDERED that the Petitioner Rafael Henriquez is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all other motions which may be pending in this civil action are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 17th day of October, 2013.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE